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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,352	01/24/2002	Gregory Mathus	5043CON	8045

7590 07/08/2002

Samuels, Gauthier & Stevens, LLP  
225 Franklin Street, Suite 3300  
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EXAMINER

KOYAMA, KUMIKO C

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 07/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/056,352

Applicant(s)

MATHUS ET AL

Examiner

Kumiko C. Koyama

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1 and 22-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Receipt is acknowledge of the Preliminary Amendment filed on January 24, 2002.

#### *Specification*

2. The disclosure is objected to because of the following informalities:

The examiner requests the applicant to select either --utilize-- or --use-- in the phrase "The hot stamping process may utilize use a heated die..." on page 5, line 20 of the disclosure and eliminate the other.

The examiner requests the applicant to replace the word "due" on page 5, line 21 with --die--.

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 22-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wijnschenk et al (US 6,270,728) in view of Moh et al (US 6,165,594).

Wijnschenk shows a test tube (FIG 1) comprising an enclosed sidewall 2 and an integral bottom surface 6 that together define a tubular container 1 having an open top 20, wherein the

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bottom surface has a concave interior surface 3 and a planar exterior surface 7 upon which machine readable coding 9 is encoded on a label, having a light-coloured background on which a contrasting pattern of dots (col 1 lines 59-65) is printed, deposited onto the planar exterior surface 7 to uniquely identify the test tube (col 1 lines 20-22). Wijnschenk also teaches that the machine readable coding is applied to an optically opaque background to ensure the machine readable coding is readable at all times with an optical reading mechanism (col 1 lines 66+).

Re claims 1, 22, and 29: Wijnschenk fails to teach that the machine readable coding is encoded within a multi-layered opaque coatings of contrasting colors.

Moh teaches a machine readable label (col 1 lines 19-23) having a multilayered construction (col 3 lines 16-17), where a top layer of one color overlies a layer of a contrasting color (col 2 lines 58-59). Moh discloses that the label is attached to identify and track a product (col 2 lines 67+) made out of a substrate 12, which includes glass (col 5 lines 43-44).

In view of Moh's teachings, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to integrate Moh's label to the teachings of Wijnschenk and create a multilayered opaque coatings of contrasting colors because it would have resulted in more distinct color contrast of the coding and distinctive opaqueness of the background, therefore resulting in reducing the error rate in reading the code.

Re claims 23, 25, 27 and 30: Moh shows a label 10, which includes base layer 14 and top layer 16, attached to a substrate 12 (FIG 1, col 5 lines 32-33). Moh teaches a formation of a code pattern by removing portions of the top layer 16 to expose the underlying base layer 14, so that the code is optically discernible (col 7 lines 12-20). Moh also teaches that layer 14 and layer 16

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are contrasting colors (col 7 lines 13-15), and that layer 14 is white and layer 16 is black (col 7 lines 26-27).

Re claim 24, 26 and 32: Moh teaches that selected portions of the second layer are removed by exposure to laser ablating techniques (col 8 lines 9-15).

Re claim 28: Moh teaches that the label may comprise metal (col 2 lines 4-12).

Re claim 31: Moh teaches that the label may comprise metal (col 2 lines 4-12). Although Moh does not disclose the exact word "hot stamping," he discloses that for forming a multilayer label, layers may be stacked and laminated together using appropriate pressure and temperature (col 16 lines 1-2).

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Moh et al. U.S. Patent No. 6,214,250 discloses a multiplayer, temperature resistant composite label.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kumiko C. Koyama whose telephone number is 703-305-5425. The examiner can normally be reached on Monday-Friday 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

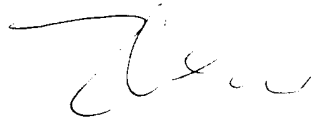
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

kck  
July 1, 2002



THIEN M. LE  
PRIMARY EXAMINER